

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>JAMES T. FISHER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-05-996-C</b>
	)	
<b>BRAD HENRY, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. Chief United States District Judge Robin Cauthron has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the complaint be dismissed without prejudice, due to Plaintiff's failure to pay the filing fee.

By order of this Court dated August 31, 2005, Plaintiff was required to pay an initial partial filing fee in the amount of \$1.83 on or before September 21, 2005. Plaintiff was advised that failure to pay the initial partial filing fee or show cause in writing for his failure to do so, could result in dismissal of this action without prejudice to refiling.

A review of the court file reveals that Plaintiff has not paid the initial partial filing fee, requested an extension of time within which to pay, or demonstrated good cause for his failure to do so. Thus, the action is subject to dismissal without prejudice to refiling. Local Civil Rule 3.4(b); Lucky v. Hargett, No. 97-6161, 1997 WL 603780 (10<sup>th</sup> Cir. Oct. 1, 1997) (upholding dismissal of Section 1983 claim for failure to pay initial partial filing fee); Amen v. United States, No. 96-5146, 1997 WL 158163 (10<sup>th</sup> Cir. April 1, 1997)

(district court should have dismissed the complaint without prejudice when the plaintiff failed to pay the filing fee).<sup>1</sup>

**RECOMMENDATION**

Accordingly, because Plaintiff has neither paid the partial filing fee as ordered by this court nor shown good cause for such failure, it is recommended that this action be dismissed without prejudice to refiling. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by October 20, 2005, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10<sup>th</sup> Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** this 30<sup>th</sup> day of September, 2005.

  
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DOYLE W. ARGO  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> Unpublished dispositions cited as persuasive authority pursuant to Tenth Circuit Rule 36.3